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No. 83-523

In the Supreme Court of the United States

OCTOBER TERM, 1983

CUYAHOGA VALLEY HOMEOWNERS AND RESIDENTS ASSOCIATION, AND DAVID HAZELWOOD, PETITIONERS

v.

SECRETARY OF INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Secretary of the Interior is authorized by the Cuyahoga Valley National Recreation Area Act, 16 U.S.C. 460ff *et seq.*, to acquire fee title to residential properties within the boundaries of the Cuyahoga Valley National Recreation Area when the Secretary determines that such acquisitions are necessary to serve the purposes of the Act.

2. Whether the condemnation under the Cuyahoga Valley National Recreation Area Act of fee title to single-family residential properties impermissibly abridges residential privacy interests protected by the Due Process Clause.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-50 to A-57) is reported at 716 F.2d 902, and the opinion of the district court (Pet. App. A-1 to A-47) is not reported.

JURISDICTION

The judgment of the court of appeals was filed on July 6, 1983. The petition for a writ of certiorari was filed on September 20, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1978, petitioners instituted this class action in the United States District Court for the Northern District of Ohio against the Secretary of the Interior and other federal officials. Petitioners sought a declaratory judgment that the Secretary had exceeded his statutory authority under the

Cuyahoga Valley National Recreation Area Act (the Act), 16 U.S.C. 460ff *et seq.*, to condemn fee title to private residences located within the Cuyahoga Valley National Recreation Area (CVNRA). In addition, petitioners claimed that the condemnation of fee title to CVNRA residential property violated the condemnees' rights under the Due Process Clause of the Fifth Amendment.[1] Petitioners also sought injunctive relief.

2. The acquisitions at issue in this case are within the CVNRA, a unit of the National Park System created by Congress in 1974 for the purpose of "preserving and protecting for public use and enjoyment, the historic, scenic, natural, and recreational values of the Cuyahoga River and the adjacent lands of the Cuyahoga Valley * * *." 16 U.S.C. 460ff. The CVNRA Act authorizes the Secretary of the Interior to acquire "lands, improvements, waters or interests" within the boundaries of the recreation area (16 U.S.C. 460ff-1(b)). With respect to "improved properties," which are defined to include certain detached single-family dwellings and agricultural land (16 U.S.C. 460ff-1(e)), the Act provides (16 U.S.C. 460ff-1(c); emphasis added):

> [T]he Secretary may acquire scenic easements or such other interests as, in his judgment, are necessary for the purposes of the recreation area. *Fee title to such improved properties shall not be acquired* unless the Secretary finds that such lands are being used or are threatened with uses which are detrimental to the

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[1] Petitioners also argued that the defendants' eminent domain decisions did not comply with the procedural requirements of the National Environment Policy Act (NEPA), 42 U.S.C. (& Supp. V) 4321 *et seq.*, or with the substantive elements of the Secretary's "Final Master Plan" for the CVNRA. The district court rejected both of these arguments (Pet. App. A-22 to A-47) and petitioners did not appeal those rulings to the court of appeals.

> purposes of the recreation area, or *unless such acquisition is necessary to fulfill the purposes of this [Act].*

When the Secretary condemns such property, the owners may retain the right to use and occupy the property for a maximum term of 25 years or until the death of the owner or the owner's spouse, whichever is later (16 U.S.C. 460ff-1(f)). Any right retained by the owner may be terminated upon the Secretary's determination that it is being exercised in a manner inconsistent with the purposes of the Act (*ibid.*).

3. The district court held that the challenged condemnations were within the Secretary's statutory authority, and the court specifically rejected the petitioners' contention that the acquisition of fee title to improved properties must not only be necessary to fulfill the Act's purposes but must also be further justified as necessary "for direct park visitor use such as a tangible park facility" (Pet. App. A-18). While acknowledging statements in S. Rep. 93-1328, 93d Cong., 2d Sess. (1974), expressing the intent "to allow fee acquisition *to be concentrated in* those areas needed for direct visitor use" and urging the Secretary, for budgetary purposes, to "*plan to emphasize* fee acquisition in the areas directly needed for public use * * *" (Pet. App. A-19 to A-20; emphasis by the court), the court found (*id.* at A-20) that

> [T]he "emphasis" or "concentration" on fee acquisitions in areas needed for direct park visitor use cannot be construed to limit the Secretary's statutory eminent domain power to instances when acquisition of fee title is only needed for direct park visitor use. Indeed, the only reason for inclusion of the "emphasis" and/or "concentration" language in the legislative history is the recognition of budgetary constraints in establishing the CVNRA.

4. The court of appeals affirmed (Pet. App. A-50 to A-57). The court held (*id.* at A-55) that the district court had properly interpreted the Secretary's statutory condemnation authority in light of the Act's broad purposes and its plain delegation to the Secretary of authority to acquire such interests "as, in his judgment, are necessary." The court rejected (*id.* at A-56 to A-57) petitioners' substantive due process arguments, stating that "when the government condemns property via eminent domain, the due process which is owed the property owner is 'just compensation.' "[2]

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decisions of this Court or any other court of appeals. Accordingly, further review by this Court is not warranted.

1. The court of appeals properly rejected petitioner's contention that the Secretary may not acquire fee title to improved property unless he establishes that it is specifically needed for direct park visitor use. That interpretation would undermine the Act's broad purposes (see 16 U.S.C. 460ff) and would unjustifiably constrict the Secretary's express authority to acquire fee title to improved properties whenever he finds that "such acquisition is necessary to fulfill the purposes of [the Act]" (16 U.S.C. 460ff-1(c)). Indeed, petitioners' interpretation would squarely conflict with Congress's expressed intent to rely on the Secretary's "judgment" in determining whether the acquisition of "scenic easements or such other interests * * * are necessary for the purposes of the recreation area" (*ibid.*). In twice

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[2]In addition, the court of appeals rejected the government's contention that, because the petitioners could raise their claims as defenses in condemnation proceedings, the district court lacked jurisdiction to entertain this action for declaratory and injunctive relief (Pet. App. A-52 to A-53).

referring to the Secretary's authority to acquire fee title to property that he deems necessary for the purposes of the CVNRA (see *ibid.*), Congress established beyond doubt both the latitude and conclusiveness of the Secretary's eminent domain determinations. Cf. *United States ex rel. TVA* v. *Welch*, 327 U.S. 546, 554 (1946) (Congress's repeated reference to the TVA's broad condemnation power in certain provisions of the Tennessee Valley Authority Act confirmed TVA's power to condemn private residences).

Petitioners rely (Pet. 18-19, 21, 31-36) on other provisions of the Act and on its legislative history as support for a "direct park visitor use" requirement, but their reliance is misplaced. As the district court found, language in the Senate Committee Report (S. Rep. 93-1328, *supra*), urging the Secretary, for budgetary purposes, to "concentrate" and "emphasize" fee acquisition in areas needed for direct visitor use cannot be taken as an implied restriction on the Secretary's authority to acquire property found to be necessary to fulfill the CVNRA's purposes (Pet. App. A-20 to A-21). Moreover, Congress has been kept fully apprised of the Secretary's acquisition and management plans for the CVNRA and has not expressed any dissatisfaction with them (*id.* at A-24). Although petitioners rely on a 1980 letter from Representative Seiberling and Senator Metzenbaum urging the Park Service to reevaluate its land acquisition program (Pet. 10), even that letter suggested that such a reappraisal was warranted for budgetary reasons and not because the Secretary lacked statutory auhtority (Pet. App. A-71 to A-73). To the extent that such post-enactment developments can ever properly reflect statutory meaning, Congress's amendment of the CVNRA Act in 1978 to increase by $30,000,000 the appropriation authorization for the acquisition of lands within the CVNRA suggests that Congress as a whole approves of the Secretary's interpretation of his authority to make necessary acquisitions under

the Act (see Pub. L. No. 95-625, § 315(b), 92 Stat. 3483 (1978)).

Petitioners' reliance on 16 U.S.C. 460ff-3(f) (Pet. 18-19) is equally unavailing. Section 460ff-3(f) encourages the Secretary to assist local governments in developing zoning ordinances that promote the purposes of the CVNRA. Petitioners rely on this provision as a signal of Congress' general "intention to limit the disruption which the creation of the Park would cause to local institutions and particularly residents inside the park area" (Pet. 18). However, an intent to avoid needless disruption is entirely consistent with authorizing the acquisition of fee title to single-family homes where that is found to be necessary. Indeed, in enacting Section 460ff-3(f), Congress chose *not* to enact a provision that would have prohibited the Secretary from acquiring any real property within the CVNRA that was in conformity with approved local zoning ordinances. See S. 1862, 93d Cong., 2d Sess. § 5(b) (1973); *Cuyahoga Valley National Historical Park and Recreation Area: Hearing and S. 1862 Before the Subcomm. on Parks and Recreation of the Senate Comm. on Interior and Insular Affairs*, 93d Cong., 2d Sess. 5, 11 (1974). Congress' refusal to enact this restriction supports the interpretation of the statute adopted by the Secretary and the courts below.

2. Petitioners do not contest the proposition that the Secretary's takings are for a well-established public purpose — creation of a park — but they argue (Pet. 37-48) that the Due Process Clause prohibits the taking of residential property unless the need for the taking can survive "careful scrutiny" by the judiciary. There is no support for this argument. In *Berman* v. *Parker*, 348 U.S. 26 (1954), upon which petitioners rely (Pet. 16-17, 38-39), the Court's observation that the condemned property was "not used as a dwelling or place of habitation" (348 U.S. at 31) was clearly not intended to suggest that a higher standard of scrutiny

would be applied to the condemnation of residential property. Indeed, in upholding the constitutionality of the District of Columbia slum-clearing program at issue in that case, the Court specifically stated (*id.* at 35-36; emphasis added) that "[o]nce the question of the public purpose has been decided, the amount and *character* of the land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch." In *United States ex rel. TVA* v. *Welch*, 327 U.S. 546 (1946) (see Pet. 13-15, 38), the Court identified no Fifth Amendment impediment to the taking of 216 residential properties for inclusion within Great Smokey Mountain National Park (see 327 U.S. at 548-550). Petitioners' contention that *Welch* involved "[n]o showing that the condemned land was comprised of residential homesteads" (Pet. 16) is simply wrong.

Petitioners also err in reading *Moore* v. *City of East Cleveland*, 431 U.S. 494 (1977), to imply that courts must engage in a higher standard of Fifth Amendment scrutiny where "family" property is condemned (Pet. 39-42). *Moore* was not a condemnation case but rather involved a zoning ordinance that prevented certain related persons, who did not constitute a nuclear family, from living together in an area zoned for single-family dwellings. A plurality of the Court held that the ordinance unjustifiably restricted choices concerning family living arrangements and thus violated substantive due process. Concurring in the judgment, Justice Stevens concluded that the ordinance failed the traditional constitutional standard applied to zoning ordinances (see, *e.g.*, *Village of Euclid* v. *Amber Realty Co.* 272 U.S. 365 (1926)) because it bore no substantial relation to any legitimate government objective. The interests in personal choice at stake in *Moore* are not involved in the Secretary's decision to acquire title to improved property within the CVNRA. Not only may the condemnees retain the right to continue to reside with their families on the

property for the period of a life estate or a term of 25 years (see 16 U.S.C. 460ff-1(f)) but, upon being paid just compensation, the condemnees and their families are free to purchase other property and continue living together elsewhere.

This Court's decisions in *Steagald* v. *United States*, 451 U.S. 204 (1981), and *Payton* v. *New York*, 445 U.S. 573 (1980), are even farther afield. *Steagald* and *Payton* confirmed the validity of residents' Fourth Amendment expectations of privacy within the confines of their own homes and struck down warrantless searches and arrests within the home when made in the absence of exigent circumstances. A homeowner's Fourth Amendment right to be free from such warrantless intrusions, however, does not affect the government's power to condemn residential property for legitimate public purposes. As this Court stated in *Berman* v. *Parker*, 348 U.S. at 36, "[t]he rights of these property owners are satisfied when they receive that just compensation which the Fifth Amendment exacts as the price of the taking."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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